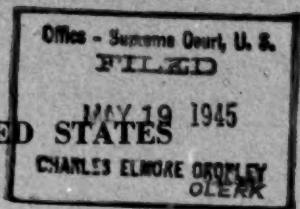


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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1944

No. 1071



■
ALEX RINKO, *Petitioner*

v.

THE UNITED STATES OF AMERICA

■
ON WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

**Petitioner's
PETITION FOR REHEARING**

HAYDEN C. COVINGTON
Counsel for Petitioner



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MAY IT PLEASE THE COURT:

Comes now petitioner, Alex Rinko, and moves this Court to reconsider its judgment of April 30, 1945, denying the petition for writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

All Available Administrative Procedure Exhausted

As grounds therefor, petitioner would show that the Government in its memorandum in opposition to the petition for writ of certiorari represented that petitioner had not completed the steps in the induction process to the point where he was unqualifiedly acceptable to the army, and on the basis of this representation argued that petitioner was not entitled to challenge the legality of the

selective process under the ruling of this Court made in *Falbo v. United States*, 320 U. S. 549. This argument, however, overlooks the fact, indisputably established in the record, that petitioner was not given an opportunity to complete the steps which the government claims were omitted and hence no further remedies or steps were available to him. Petitioner merely stated that he could not and would not take the oath of induction. Upon learning of this, the induction officials removed him from the line of inductees. Thus from the time of reporting at the induction station to the time he left, he obeyed every direction, order and command of the induction officials, save and except that he declined to take the oath of induction. At no time did he refuse to complete any of the available administrative steps short of the induction ceremony itself. A brief examination of the record will show this to have been the situation.

After successfully completing his preinduction physical examination, and after his classification was finally settled by the Board of Appeals as I-A, petitioner was ordered to report at the local board to receive transportation to the induction station, where a final examination was to be held and, if successfully completed, the induction ceremony was to take place. Petitioner complied with this order in its entirety.

Upon arrival at the induction center it was petitioner's duty under the law to obey the commands and instruction of the officials on duty there. Consequently, he took his place with the group of inductees then being processed and started along the line of desks or "stations" where separate steps of the examination were to be completed. The process was explained in detail by Major Charles W. Bellis, Commanding Officer of the induction center. [30-31] The last four steps in the induction process were explained as follows:

"After the roster desk came another large, long desk, with two sides, with 18 girls, that was the maxi-

mun capacity, 18 typists, sitting en banc, nine on one side and nine on the other, and the line split at that point, and there Section 3 of the 221 form [Report of Physical Examination and Induction] was filled out.

"Section 3 concerns previous military service, name of the nearest relative, normally the mother, the person to be notified in case of an emergency, the beneficiary and so forth; and beyond that station was the signature table where each inductee signed his name, stating that the information he had given was correct.

"Then came the fingerprint table, and after that the final checking table where the records were checked thoroughly for omissions and errors.

"After that table was a room known as the ceremonial room the place of induction. After they passed through the induction room, they were sent over to barracks in another part of the post." [31-32]

There is no dispute in the record as to what took place when petitioner reached the stenographers who were to fill out Section 3 of Form 221. The typist asked what his occupation was. Petitioner advised her that he was an ordained minister and that he had been wrongfully reclassified from IV-D to I-A by his local board. Thereupon the typist told him that there must be some mistake in his case and took him out of line to see the commanding officer in charge of the induction center. [125] Major Bellis, the commanding officer, directed petitioner to sit down beside his desk and explain his objections. [42, 125] Petitioner then explained in detail. He advised Major Bellis that since he was a minister of the gospel he was exempt from military training and service and that he would not take the oath of induction for the reason that he was not obliged so to do under the law. [41, 125, 131] After some discussion, Major Bellis then directed petitioner to report to Captain Girard, since it was then too late to proceed further with the induction process. Captain Girard was responsible for providing accommodations in the barracks for men who were tem-

porarily at the induction center and who could not be processed immediately. [59] Petitioner reported to this officer and was given overnight accommodation in the army barracks. [133-134] Captain Girard directed petitioner to report back to Major Bellis the next day. [133] Upon reporting back to Major Bellis the following morning, petitioner again stated that he would not submit to induction. [34] A statement was then prepared for petitioner's signature, setting forth this refusal. [51, 134] After signing this statement before two witnesses, petitioner was directed to leave the military reservation. [51]

It will be noted that as soon as the Commanding Officer discovered that petitioner did not intend to take the oath, he never thereafter offered petitioner the opportunity of completing the last three steps of the induction procedure immediately preceding the oath ceremony. This was specifically admitted by the Commanding Officer:

"Now, then, did you at any time tell this man that it was necessary for him to complete Form 3, and then be fingerprinted and then go into the ceremonial room; did you tell him that? A. No, I did not." [45]

Moreover, petitioner testified positively that he was never given opportunity to continue on through the remaining three stations before the ceremonial room was reached for the administration of the oath. [131, 134] In fact he expressed to the Commanding Officer his willingness "to do everything but take the oath" [135], but nevertheless he was not requested to do anything further. Petitioner certainly had no means of knowing that there were three more stations before the ceremonial room was reached. Thus it is plain and undisputed that petitioner went as far as it was possible for him to go in exhausting his administrative remedies.

That there may have been some additional steps short of actual induction which were not completed cannot be relied upon by the Government as a valid ground for deny-

ing petitioner's right to defend against the indictment, when those steps were beyond his reach. The first requirement of the rule regarding the exhaustion of administrative remedies is that the remedy should be available. No argument is needed to demonstrate the thorough soundness of this rule. *It is submitted that petitioner completely exhausted his administrative remedies as far as it was possible for him to do.* Thus, the rule in *Falbo v. United States*, 320 U. S. 549, cannot be applied to this case.

It will be noted that the "administrative remedies", which the Government claims petitioner failed to exhaust, in actuality cannot thus be designated for they do not offer any substantial opportunity to the registrant to adjust his differences with the administrative agency. Had petitioner been able to complete the process at each of the three remaining stations, he would only have been required to furnish routine registration information relative to his personal status. Certainly the taking of his fingerprints, the naming of a person to be notified in an emergency, and the designation of a beneficiary cannot be termed "administrative remedies". The Government, however, suggests that one of the questions he would have been asked dealt with his previous military service, and had he answered that he had previously been dishonorably discharged from any branch of the military service, he would have been forthwith rejected. But petitioner had already indicated on his selective service questionnaire (Form 40) that he had had no previous military service. (Cf. [174]) Had he indicated on his questionnaire that he had been dishonorably discharged, he would never have been placed in an inductible classification under the Selective Service Regulations. It is significant that the government did not contend that petitioner had been dishonorably discharged from the military service.

The Commanding Officer at the induction center did not insist that petitioner complete the procedure at the last three stations before the final induction ceremony. He did not do so because it would have accomplished no useful pur-

pose. If petitioner would not take the oath of induction, then the army had no occasion to obtain from him the information that would have been required at the last three stations. The conduct of the Commanding Officer was only reasonable under the circumstances. It is the argument of the Government that is unreasonable, because the procedure it insists petitioner should have gone through would have been empty, idle and useless. But in any event petitioner, who had no means of knowing of the additional stations before the induction ceremony was reached, ought not be denied his right to defend against the indictment on this ground.

Conclusion

Wherefore petitioner prays that the order and judgment, heretofore entered on April 30, 1945, denying the petition for writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, be set aside and held for naught and that upon reconsideration the petition heretofore submitted be granted. Petitioner prays for such other relief as he may show himself justly entitled to in the premises.

ALEX RINKO, *Petitioner*

By HAYDEN C. COVINGTON
Counsel for Petitioner

Certificate

I, the undersigned counsel for petitioner, do hereby certify that the foregoing petition for reconsideration is prepared and filed in good faith so that justice may be done, and not for the purpose of delay.

HAYDEN C. COVINGTON
Counsel for Petitioner

